

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

TAVIUS SMITH

)
) CR 08-135
) CV 19-714

MEMORANDUM ORDER

In this action, Defendant previously filed three Motions to Vacate pursuant to 28 U.S.C. § 2255. The first, filed on October 18, 2010, was denied pursuant to a collateral attack waiver in Defendant's plea agreement. The second, filed on June 17, 2016, was voluntarily dismissed. The third, filed on April 30, 2018, was denied and dismissed by Order dated August 16, 2018, as a second or successive petition that required certification by the Court of Appeals. By Certified Order in Lieu of Final Mandate dated February 12, 2019, the Court of Appeals denied a certificate of appealability.

On June 18, 2019, Defendant filed another Section 2255 Motion. The Government has responded thereto with a Motion to Dismiss, arguing that it is an unauthorized second or successive petition. "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." McFarland v. Scott, 512 U.S. 849, 856, 114 S. Ct. 2568, 129 L. Ed. 2d 666 (1994). Defendant's petition will be dismissed as an unauthorized second or successive petition, without prejudice to Defendant to reassert his claims should he obtain the appropriate certification from the Court of Appeals. AND NOW, this 29th day of August, 2019, IT IS SO ORDERED.

BY THE COURT:



Donetta W. Ambrose
Senior Judge, U.S. District Court